not undertake to compel a defendant who has no trade, profession or employment to acquire one. *Ex parte Todd*, 119 Cal. 57, 50 Pac. 1071; *Messervy* v. *Messervy*, 85 S. C. 189, 67 S. E. 130, 30 L. R. A. (N. S.) 1001, 137 Am. St. Rep. 873. In short, the correct and general rule seems to be that when a court has decreed alimony (including expenses and security) against a defendant, it may commit him to prison if he has the means wherewith to pay the alimony and contumaciously refuses to do so; but it cannot commit him if he is unable to pay, nor can it compel him to work in order to acquire the means for payment. See authorities *supra*. The principal case seems in accord with this rule.

CONTRACTS—ACCEPTANCE—SUGGESTED MODIFICATION.—In a controversy over the exchange of certain property, the plaintiffs wrote to the defendant making several propositions of settlement. The defendant replied, making a counter proposition, but saying that there was nothing for him to do but accept one of the settlements offered by the plaintiff, and naming the one he desired. The plaintiffs brought an action according to the terms of their proposition. *Held*, the defendant's reply amounted to an acceptance. *Foster* v. *West Publishing Co.* (Okla.), 186 Pac. 1083.

It is a positive principle of law that an acceptance must not be conditional or vary from the offer, for then it will be construed as a counter proposal. 9 CYC. 267. But if the offer is accepted as made, the acceptance is not conditional or does not vary from the offer merely because of extraneous inquiries attached to the acceptance, such as whether or not the offeror will alter his terms. See *Turner* v. *McCormick*, 56 W. Va. 161, 49 S. E. 28, 67 L. R. A. 853, 107 Am. St. Rep. 904; *Culton* v. *Gilchrist*, 92 Iowa 718, 61 N. W. 384. However, the courts seem to differentiate between requests and inquiries. A request for a change or modification of a proposed contract, made *before* acceptance thereof, will amount to a rejection of the offer and constitute a new proposal. *Burmester* v. *Phillips*, 25 Fed. 805. A mere inquiry whether the offeror will alter his terms *before* acceptance does not amount to a rejection of the offer, and an acceptance within a reasonable time will constitute a binding contract. *Stevenson* v. *McLean*, L. R. 5 Q. B. D. 346. See BENJAMIN, SALES, § 39.

An unqualified acceptance of the offer, together with a *contemporaneous* request to modify the terms of the offer constitutes a binding contract. *Wilkins* v. *Vass Cotton Mills*, 176 N. C. 72, 97 S. E. 151; *Culton* v. *Gilchrist*, *supra*; *Brown* v. *Cairns*, 63 Kan. 693, 66 Pac. 1033; *Phillips* v. *Moor*, 71 Me. 78. So an acceptance may be complete, though it expresses dissatisfaction at some of the terms, as long as it is a mere "grumbling assent" and not a dissent. *Joyce* v. *Swan*, 17 C. B. N. S. 84; *Eames* v. *Home Insurance Co.*, 94 U. S. 621; *Johnson* v. *Federal Union Surety Co.*, 187 Mich. 454, 153 N. W. 788. The instant case is on all fours with these cases last cited.

Nor is an acceptance made conditional by the addition of words that are immaterial. *Clark* v. *Dales*, 20 Barb. (N. Y.) 42; *Matteson* v. *Sco-*

field, 27 Wis. 671. So where there was an unqualified acceptance, some statements about rents which were not parts of the contract, but a mere hope expressed, did not affect the binding character of the acceptance. *Bleecker* v. *Miller*, 40 Okla. 374, 138 Pac. 809. But see *Merriam* v. *Lapsley*, 12 Fed. 457.

Statements made in a letter containing the offer do not prohibit its acceptance being a binding contract, if they are not terms connected with the contract. *Moore* v. *Pierson*, 6 Iowa 279, 71 Am. Dec. 409. And so it is a just principle of construction, both morally and legally, that the promisor is bound according to the sense in which he apprehended that the promisee received his proposition. *Bruner* v. *Wheaton*, 46 Mo. 363.

COURTS—SPECIAL APPEARANCE—OBJECTIONS TO JURISDICTION NOT WAIVED BY SUBSEQUENT PLEA TO THE MERITS.—An action was brought against a corporation and service of process was made upon an agent of the corporation in the State, but the corporation was not doing business in the State. The corporation appeared specially by attorney and objection to the jurisdiction of the court over the person of the defendant. The objection was overruled and an extension of time was granted to the defendant in which to "demur, answer, or otherwise act." The defendant, still objecting to the jurisdiction, demurred to the complaint and later filed an answer. *Held*, the objections to the jurisdiction are not waived. *Pine Hill Coal Co.* v. *Gusicki* (C. C. A.), 261 Fed. 974.

An appearance is special when it is made for the sole purpose of objecting to the jurisdiction of the court over the person of the defendant because of want of process, defects in the process or service thereof, or some other jurisdictional defect. See *Walling* v. *Beers*, 120 Mass. 548; *Multnomah Lumber Co.* v. *Weston Basket Co.*, 54 Ore. 22, 99 Pac. 1046; *Norfolk, etc., R. Co.* v. *Consolidated Turnpike Co.*, 111 Va. 131, 68 S. E. 346, Ann. Cas. 1912A, 239.

The test for determining the character of the appearance is the relief asked. *Scott* v. *Mutual Reserve Fund Life Ass'n*, 137 N. C. 515, 50 S. E. 221. In this the law looks to substance rather than to form. See *Moore* v. *Blake*, 98 N. Y. Supp. 233. If the appearance is general in effect, the fact that the party styles it a special appearance will not change its character. *Crawford* v. *Foster*, 28 C. C. A. 576, 84 Fed. 939.

A defendant appearing specially to object to the jurisdiction of the court must keep out of court for all other purposes. He must limit his appearance to that particular question or he will be held to have appeared generally and to have waived the objection. *St. Louis, etc., R. Co.* v. *McBride*, 141 U. S. 127; *Reed* v. *Chilson*, 142 N. Y. 152, 36 N. E. 884. A party cannot be at once in court and out of court. He may not, in the same breath, dispute the merits of the cause alleged against him and deny jurisdiction of the court over his person. *Crawford* v. *Foster*, *supra*. The right to make a special appearance is a privilege allowed by practice, and it must be exercised under the rules of procedure. See *Mahr* v. *Union Pacific R. Co.*, 140 Fed. 921; *State* v. *Grimm*, 239 Mo. 135, 143 S. W. 483.